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September 29, 2011

Re: Parent-Child Exclusion Claim for
Assignment No.: 11-081

Dear Ms. Long:

This is in response to your request for a legal opinion on the denial of a parent-child exclusion claim by the Los Angeles County Assessor's Office (the Assessor's Office) for your client, S (S).[1] We have reviewed the relevant documentation you have provided to us. We have summarized the pertinent facts below. Our opinion is based solely upon the facts as summarized below, and any assumptions made and stated herein.

Facts

There are two principal properties at issue in this matter, Court # , , APN -055 (Property 1), and Road (also known as South Avenue), APN -033 (Property 2). In addition, a residence located at Road, , APN (the House) was the subject of a parent-child exclusion for principal residences. The parties involved in the transactions at issue in this matter are S , her brother R (R), and their parents F (Father) and D (Mother). Father and Mother are both deceased. Neither Father nor Mother had previously used any of their available $1 million parent-child exclusion.

On July 10, 1979, Father and Mother (together, the Trustors) executed the G Family Trust (the Original Trust), and conveyed multiple assets to the Original Trust, including Property 1, Property 2 and the House. The Original Trust was amended in 1991 (the Family Trust) and provided for the distribution of assets, including the relevant properties, upon the Trustors' deaths.

Father died in 1998 and a Survivor's Trust and a Decedent's Trust were established as set forth in the Family Trust.

[1] Throughout this opinion, we refer to your client as S , and when we say that S took a certain action, we understand that the action may have actually been taken by S with her husband Steve, or by Steve acting on S 's behalf.

Mother died on June 6, 2003, at which time S and R became co-trustees of the Family Trust. After Mother's death, disputes arose between S , R , and their families over the proper distribution of certain properties in the trust estate, including the House. In September 2008, S , R and their family members entered into a Settlement Agreement and Mutual Release (the Settlement Agreement). The Settlement Agreement provided that R would receive Property 2 and the House outright (Section 3(a), (b)), and S would receive Property 1.

On July 24, 2009, the following actions took place in accordance with the Settlement Agreement: (i) By grant deed S and R , as trustees of the Family Trust, transferred Property 2 and the House to R ; (ii) By grant deed S and R , as trustees of the Family Trust, transferred Property 1 to S outright; and (iii) R resigned as a co-trustee of the Family Trust. The deeds to Property 1, Property 2, and the House were recorded on July 31, 2009.

It was your understanding that the title insurance and escrow company that the parties used to settle their claims and transfer the properties, Title Insurance Corporation and Land Title Insurance Company, (the Title Company), was to file a Form BOE-58-AH, Claim For Reassessment Exclusion For Transfer Between Parent and Child (BOE-58-AH), for S as transferee of Property 1 with the Assessor's Office when it recorded the deeds. (Your firm sent the BOE-58-AH to the Title Company in the same package with the deeds on July 21, 2009.)

It is not clear when the Title Company sent the Form BOE-58-AH for S 's claim on Property 1 to the Assessor's Office. The Assessor's Office states that it received this form on January 6, 2010. The BOE-58-AH had an execution date of July 27, 2009. The filed BOE-58-AH did not include a copy of the Family Trust.

On or about April 2010, R filed a BOE-58-AH and claimed the exclusion for a principal residence on the House, and claimed the exclusion for up to $1 million of "other property" from each parent on Property 2. As sole trustee of the Family Trust in April 2010, S did not sign this Form BOE-58-AH.[2] The Assessor's Office received these claims on April 20, 2010. R included a copy of the Family Trust with his Form BOE-58-AH. The Assessor's Office approved R 's claim with respect to the House and granted R the full $2 million exclusion ($1 million from each of Father and Mother) on Property 2 because the full cash value of Property 2 upon Mother's date of death was in excess of $2 million.

On July 9, 2010, S received a supplemental tax bill based upon a change in ownership and reassessment of Property 1.

On July 9, 2010, S called the Assessor's Office to inquire about the supplemental tax bill and spoke with assessor staff, who instructed her to download a BOE-58-AH and to file it. On the same day, S completed another BOE-58-AH, claiming a portion of Mother's $1 million exclusion to be applied to Property 1. Again, this claim did not include a copy of the

[2] We have not seen this claim form and assume that R signed the transferee certification in his own name and the transferor certification as trustee of the Family Trust. We are not aware of the date that R made the transferor certification as trustee of the Family Trust.

Family Trust, which the Assessor's Office already had, having received it with R 's claim filed in April.

On September 17, 2010, the Assessor's Office sent to S a form OWN-120, which stated:

> There has been no "Change in Ownership" as defined by law. The reappraisal previously processed will be reversed. The 2009-010 Supplemental bill(s) will be canceled, and corrected bills and/or refunds will be issued, as appropriate. Any delinquency penalties, which may have resulted from the original reappraisal, will be waived.

On November 1, 2010, the Assessor's Office reversed course and sent to S a second form OWN-120, which stated: "Your claim has been denied for the following reasons," and then the box "Other" was checked, with the following comment:

> According to the Legal Services Unit, we processed the Prop 58 Claim for R first as he turned in the requested Trust Document ahead, 3 months prior to you turning it in.[3] The processing is on a first come first served basis in the absence of instructions as to which properties will be processed first.

Upon receipt of this form, S called D of the Assessor's Office. It is your understanding that Mr. D tried to resolve the issue within the Assessor's Office over the following two month period, and ultimately was unsuccessful, but persuaded S to send a letter to , Senior Property Assessment Specialist.

On January 10, 2011, S sent a letter by fax to " " [sic] , asserting that each of S and R should have been attributed $1 million of the total $2 million parent-child exclusion available from Father and Mother. S followed up by telephone a couple weeks later, and was told that her claim was denied because her claim was incomplete and that R had already been granted the entire $2 million exclusion because his claim was the first complete claim.

S contacted your firm to assist you in this matter. In January, your firm made multiple calls to the Assessor's Office, trying to determine what had occurred. In those calls, you were told the following: (i) S 's claim was "incomplete" because it failed to include a copy of the Family Trust; (ii) S did not respond to the Assessor's Office's requests for a copy of the Family Trust; (iii) the Assessor's Office approved R 's claim because it included a copy of the Family Trust; and (iv) R 's claim was approved because it was the first in time complete claim.

Your office sent a letter to the Assessor's Office dated February 28, 2011, in which you asserted that the exclusion was to be allocated first to Property 1 because S 's was the "first in time" claim, and that any remaining balance of the $2 million exclusion could be applied to Property 2. In that letter, you also asserted that the BOE-58-AH filed by R on Property 2 was unauthorized because R , who was no longer a trustee of the Family Trust, signed it as a trustee and no longer had such power.

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[3] Because S never actually provided a copy of the Family Trust, we assume this means "3 months prior" to S 's second filing of the BOE-58-AH.

To follow up, you and of your office spoke with at the Assessor's Office, who did not agree with your firm's position as outlined in the February 28th letter. On April 13, 2011, Ms. sent to your office a form OWN-128 "Investigation of Ownership Claim," with the box "Other" checked and a notation which reads:

> You are not the authorized agent/attorney for R . He is represented by counsel. Any information pertaining to his claim is confidential. Although we are in receipt of your letter dated February 28, 2011 to R L , we can not honor your request. [¶] It is the responsibility of the transferees to decide the allocation of the exclusion.

On April 21, 2011, S sent to a letter requesting that the Assessor's Office send a copy of R 's claim to your office. S 's basis for this request was that she was a "trustee of the transferor's trust" and thus was able to inspect the claim under Revenue and Taxation Code section 63.1, subdivision (i). In response to S 's request, the Assessor's Office sent to your office a "Declaration of No Records," dated April 27, 2011, and signed by the Custodian of Records, which states as follows:

> In response to your request for documents pertaining to -033, Road, , CA[,] Revenue and Taxation Code Section 408 prohibits our office from disclosing records that are not public documents unless we are compelled by a Judge [sic] to do so. The documents you have requested are privileged and cannot be produced to you.

That "Declaration of No Records" also quoted Revenue and Taxation Code section 408, subdivision (e)(3). Subsequently, I had a conversation with the Assessor's Office regarding the ability of S to inspect R 's claim, and it was agreed that she would be able to inspect the claim if she went to the office.

On June 29, 2011, your office sent another request to the Assessor's Office, for any records of a written request having been made to S seeking a copy of the Family Trust. In response, on June 20, 2011, the Custodian of Records signed a "Declaration of No Records," which states:

> In response to your request sent via facsimile dated June 29, 2011, "for any request(s) from our office to S asking for the Trust Agreement in connection with the Claim for Reassessment Exclusion for transfer between Parent and Child filed for APN -055", we respectfully respond: [¶] To clarify, our office indicated that a request for the trust agreement in order to approve such claim was made of your client. There is nothing to indicate that this request was mailed. We are in accord with your client's admission that she never received a written request. [¶] However, we maintain a request was made, telephonically. In our normal course of business, an effort is made to give the taxpayer every opportunity to have their claim granted. Thus, telephonic requests are made of the taxpayer if the supporting documentation is absent, instead of immediately denying the deficient claim. We maintain that telephonic communication welcoming supplemental information is an expeditious, prudent and courteous means of notifying a taxpayer. Generally, if and/or when the requested materials are received and all other requirements are met, the taxpayer

obtains the benefit requested without delay. Ultimately, the responsibility is upon the taxpayer making the claim, [sic] to file timely and ensure that all requirements of the exclusion have been satisfied.

You have asked our opinion whether the Assessor's Office correctly granted the full $2 million exclusion to R 's claim.[4]

Law and Analysis

Section 63.1 sets forth the parent-child exclusion from change in ownership. To receive the exclusion, a claimant must file a claim form, BOE-58-AH, with the assessor. Section 63.1, subdivision (d)(1) provides, in relevant part, that the exclusion is only allowed if the transferee[5] files a claim with the assessor and furnishes to the assessor each of the following items:

(A) A written certification by the transferee that the transferee is an eligible transferee (Rev. & Tax. Code, § 63.1, subd. (d)(1)(A));

(B) A written certification by the transferor, the transferor's legal representative, the trustee of the transferor's trust, or the executor or administrator of the transferor's estate, that the transferor was an eligible transferor (Rev. & Tax. Code, § 63.1, subd. (d)(1)(B)); and

(C) If the transfers involve residential real property and other real property, a written certification including both of the following: (i) a certification that the residential real property is or is not the transferor's principal residence; and (ii) a certification that the other real property has or has not been previously transferred to an eligible transferee, the total full cash value of the property of any property that has been previously transferred, the location of that property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property (Rev. & Tax. Code, § 63.1, subd. (d)(1)(C)).

Section 63.1, subdivision (i) provides:

A claim filed under this section is not a public document and is not subject to public inspection, *except that a claim shall be available for inspection by* the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, the trustee of the transferee's trust, *the trustee of the transferor's trust, and the executor or administrator of the transferee's or transferor's estate*. (Emphasis added.)

[4] It is our understanding that there is no dispute as to the distribution of the relevant properties or their eligibility for the parent-child exclusion and so we limit our opinion to the proper allocation of the parent-child exclusion and the issues around requests for claim inspections.

[5] The statute also allows for this requirement to be satisfied by the transferee's legal representative, a trustee of the transferee's trust, or the executor or administrator of the transferee's estate to fulfill this requirement; since this estate was not probated and therefore did not have an executor or administrator, we are omitting this language in the interest of brevity.

Subdivision (d)(1) of section 63.1 makes clear that for a claim form to be valid, it must be signed by both the transferor and the transferee.[6]

Letter to Assessor (LTA) 1991/76 (October 29, 1991) (included in Annotation 625.0036), states our long-held view that a claim form that fails to provide the minimum information required by section 63.1, subdivision (d) is incomplete and not valid and the exclusion cannot be granted unless the eligible transferee files a claim which furnishes that information.[7] In our opinion, the converse of this rule is also true. That is, a claim which *does* include all of the information required by subdivision (d) is both complete and valid (assuming all of the other statutory requirements are satisfied).

If an otherwise eligible transfer is made through the medium of a trust, neither Proposition 58 nor Revenue and Taxation Code section 63.1 explicitly requires the transferee to submit a copy of the trust to the assessor as a condition of receiving the exclusion. Even though the law does not require a transferee to submit a copy of the trust to make a claim complete, the Board has stated an assessor may require proof of eligibility before granting the parent-child exclusion.[8] In the back-up letter to Property Tax Annotation 625.0199 (May 7, 2004), the Board was asked whether a claimant could provide to the assessor a copy of a trust certification which did not state the names of the beneficiaries and did not identify the property interests held in trust, as proof of eligibility for the exclusion. We concluded that this would not suffice. Under the general laws requiring assessees to provide any relevant information requested to enable an assessor to make an exclusion eligibility determination, in the case of transfers from trust, the assessor may require either a copy of the trust or a trust certification which includes "all information concerning the identity and interests of the beneficiaries, the powers of the trustee, and other relevant terms, as a condition of processing and granting the exclusion." This is because what is necessary for the assessor to make a determination of whether the parent-child exclusion applies is evidence about the identity and granted interests of the trust beneficiaries, the powers of the trustee, and other terms relevant to the disposition of trust assets.

In our opinion, a claim filed without a copy of the trust, which otherwise satisfies all the statutory requirements under section 63.1, even when a request for a copy of the trust has been made, is neither *invalid* nor *incomplete*, but rather is unable to be granted by the assessor.[9] The significance of extrinsic evidence regarding the identity of beneficiaries, their relationships to the grantors, their rights to specific properties, and the powers of the trustees, is *the information itself* so that the assessor may make a proper determination as to eligibility. Once the assessor obtains the information necessary for him or her to make the determination of eligibility for the

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[6] As mentioned above, we have not seen a copy of R 's claim. We note here that since R was no longer a trustee of the Family Trust after July 24, 2009, if he signed the claim form after that date, there may be an issue as to whether he had the legal authority to do so. As it would be an issue to be determined under the Probate Code and California common law, we render no opinion on the legality of R signing the claim form after his resignation as trustee and the consequent validity of his claim form on that basis.

[7] As we said in that letter, situations may arise where a claim is filed before all of the information required in subdivision (d) is known, for example where an executor has discretion to transfer properties or where a distribution of assets may be delayed by a complicated or prolonged trust administration. Thus, it may make sense in certain circumstances to file a protective claim.

[8] Thus, Form BOE-58-AH, Claim for Reassessment Exclusion for Transfer Between Parent and Child, Section B, item 8 states "If the transfer was through the medium of a trust, you must attach a copy of the trust."

[9] We note that here, a request was made by telephone for a copy of the trust. While there is no statutory requirement that an assessor request a trust document in writing, we believe that a request for information the basis of which could be the denial of a change in ownership exclusion should be made in writing.

exclusion, the claim must be granted. If all of the necessary information may be gleaned from a single trust document, it is not relevant which beneficiary provides a copy of the trust to the assessor.[10]

Therefore, in this case, we note that the issue is not one of an *invalid* claim (S 's, as the Assessor asserts) versus a *valid* claim (R s, because it included a copy of the Family Trust). This is also not an issue of an incomplete claim being filed, since S 's claim was complete in that it provided the information required by section 63.1, subdivision (d). Further, this is also not a case where multiple transfers were made over time and thus the exclusion should be allocated to the transfers that occurred first in time.

Instead, because the transfers of Property 1 and Property 2 were made on the same date, the date of Mother's death, this is a case of competing claims. LTA 2008/018 (February 29, 2008) sets forth the Board's position on how to treat multiple claims on multiple properties from the same eligible transferor. If parent-child claims are filed for multiple properties for which the full cash values of the total properties cumulatively exceed the $1 million limit, the transfer date determines which properties are to receive the exclusion. It is the Board's position that the first properties transferred shall receive the $1 million exclusion in this situation. However, if the transfer date is the same for all properties (for example, the date of death), the transferees must decide which properties are to receive the exclusion.

LTA 2008/018 gives the following example of this situation:

> Example 2: In addition to his principal residence, a father owns four parcels of other real property with a combined adjusted base year value of $2,000,000. The father dies in 1992. His will bequeaths two parcels to son A and the other two parcels to son B. Both sons file parent-child exclusion claims for the real property. Since the transfer date is the same for all the properties, sons A and B must decide which properties are to receive the $1 million exclusion. The exclusion is to be applied on a pro rata basis [between land and improvements] and not to selected portions [of each property].

This is a case just like Example 2. When competing claims are received and the combined adjusted base year values of the properties for which the claims are made exceeds the available limit, the Assessor's Office should not grant any of the requested claims, but rather should notify the transferees that they must advise the Assessor's Office of the desired allocation between the claims.

The fact that S 's claim could not immediately be granted upon filing because it did not contain sufficient information to determine the identity and granted interests of the trust beneficiaries, the powers of the trustee, and other terms relevant to the disposition of trust assets, while R 's later-filed claim could be granted because it included a copy of the Family Trust that provided this information, does not affect this analysis. This is because we have long

[10] Of course, we acknowledge that the information a transferee provides may be determined by the assessor to be unreliable, and at the time it may be appropriate for the assessor to request additional proof or to deny a claim for exclusion and allow a claimant to appeal such determination through the ordinary appeals process. The facts here do not present such a case, since the Assessor's Office found the copy of the Family Trust provided by R reliable enough to grant the exclusion on Property 2.

recognized that claims may be filed at different times and that often protective claims may be filed when all of the information necessary to make a claim complete and valid is not yet known or available. (See Annotation 625.0036.)

We note here that an issue may arise as to the proper course of action when the assessor has received multiple claims to the same available portion of a transferor's $1 million limit. Of course, if an allocation among the potential beneficiaries has been made, it would be appropriate to grant the claimed exclusion. However, if this is not the case, the assessor should not grant the exclusion until the beneficiaries have made such an allocation amongst themselves. In any event, the overriding principle is that all potential eligible transferees have up to three years to file a claim under section 63.1, subdivision (e)(1)(B) to obtain full relief, and in our opinion the legislative directive to liberally construe this exclusion includes allowing a full review of all claims filed within this time. Therefore, if the assessor receives, within the three years statute of limitations in subdivision (e)(1)(B), a claim against the same $1 million limit after it has already granted the entire exclusion to another eligible transferee, in our opinion *all* of the complete and valid claims filed within the three year period for which the transfer date was the same are competing claims within the meaning of Example 2 in LTA 2008/018. The assessor should inform the beneficiaries that they must decide how to allocate the exclusion in accordance with our guidance in LTA 2008/018. This approach allows the assessor to process received claims promptly while accommodating the complexities involved in some transfer situations.

In this case, the Assessor's Office understood that competing claims were being made for Father and Mother's $1 million each exclusion amounts. Thus, it should have, in our opinion, reversed the exclusion already granted to R , and notified S and R that they must agree upon an allocation before any exclusion is granted.[11]

Finally, in our opinion, section 63.1, subdivision (i), by its plain language, clearly grants a trustee of a trust the right to inspect a parent-child exclusion form filed for property which the trust was the transferor, regardless of whether that person was still a trustee at the time of the request.[12] Therefore, in our opinion, S has a right to view any claim for filed by R (and vice-versa) under this provision, because both were trustees of the transferor's trust at the time of the transfer. It would not matter that S was no longer a trustee at the time of her request to view R 's claim, because what is relevant is that she had a fiduciary duty with respect to the Family Trust at the time of the transfer that is the subject of his claim, and it is that legal relationship that is intended to be covered by this provision.

[11] In this case, we are of the view that once the Assessor received a copy of the Family Trust from R , the Assessor had the information necessary to make a proper determination as to eligibility on both R 's claim *and* S 's claim. Since S 's claim was already complete and valid as meeting the statutory requirements, requiring S to provide a copy of the Family Trust to the Assessor's Office before considering her claim would be redundant and would go beyond the requirements of Proposition 58 and section 63.1.

[12] The right to inspect a form under section 63.1 is a different inquiry than the right of a former trustee to *sign* a claim form as a trustee. This is because whether one who had resigned as a trustee could sign documents would be governed by laws and principles outside the property tax area and those laws could limit this ability.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Matthew F. Burke

Matthew F. Burke
Tax Counsel III (Specialist)

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cc: Honorable
County Assessor

Ms.
Senior Property Assessment Specialist
County Assessor's Office

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70

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November 26, 2012

Mr.

Re: Parent-Child Exclusion: $1 Million Limit
Assignment No.: 12-094

Dear Mr. :

This is in response to your letter regarding the application of the parent-child exclusion where two eligible transferees claim the deceased transferor's $1 million exclusion for a non-principal residence and the transferees are unable to agree upon the allocation of the $1 million.[13] As explained below, it is our opinion that first, the parent-child exclusion claim form must contain a written certification by the transferor of the parent-child relationship in order to be a valid claim. Further, since the transfer dates are the same for both transferees, they must agree upon an allocation of the available amount of the $1 million exclusion before any of that amount is granted to either transferee.

Facts

On July 21, 1992, L ("L " or the "transferor") created the L Living Trust, dated July 21, 1992 (L 's Trust).

As of March or April 1993, L , as trustee of L 's Trust, owned interests in five properties (collectively, the M Properties).[14] On June 2, 1993, L recorded five quitclaim deeds with the Los Angeles County Recorder transferring a remainder interest to his son, J (J), and retaining a life estate for himself in one-third of his interest in each of the M Properties.

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[13] This opinion is being requested in connection with an appeal before the Los Angeles County Assessment Appeals Board that you have filed. Your client and the Los Angeles County Assessor's office are aware that we will be issuing this opinion, have examined and/or provided the facts set forth herein, and were given an opportunity to provide additional information in connection with this letter.

[14] According to the First Amendment to L 's Trust, which is the most recent amendment that you provided to us, there is an apparent discrepancy in identifying one of the M Properties. However, it does not affect the conclusions in this letter.

In October 1995, L recorded grant deeds transferring one-third of his original ownership interests in the above properties to himself,[15] and the remaining one-third of his interest to J . J filed parent-child exclusion claims for those interests at that time, and the transfers were excluded from reassessment.

L died on October 24, 2011, survived by his sons, J and S (S), and L 's adult granddaughter, A (A). At the time of his death, L had $546,322 remaining of his $1 million exclusion for a non-principal residence.

Upon L 's death, S became the sole successor trustee of L 's Trust and was the named executor under L 's Last Will and Testament. The beneficiaries of L 's Trust are S and J as individuals, as well as A 's trust.

On December 1, 2011, the Los Angeles County Assessor's office (Assessor) received five parent-child exclusion claims for each of the transfers by L of interests in the M Properties to J , as the remainderman of L 's life estate interest. J signed each of the parent-child claims as both "transferor" and as "transferee". Each of the parent-child claims contained an attachment stating that all of the transfers took place as of the date of L 's death, when L 's life estate in each of the M Properties terminated. J and S never discussed how L 's $1 million exclusion should be allocated.

On January 20, 2012, S recorded five grant deeds with the Los Angeles County Recorder transferring L 's Trust's remaining interest in the M Properties to himself.[16] At the end of January 2012, the Assessor received five parent-child exclusion claims filed by S for the date of death of L , for his interests in the M Properties. S signed each of the parent-child claims as "transferor," as the duly authorized administrator of L 's estate, and as "transferee" in his individual capacity.

Upon S 's filing of parent-child claims, the Assessor advised S that J had used $481,537 of the $546,322 that had remained of the $1 million exclusion for non-principal residences, and $65,085 was left to allocate to the transfers from L to S . The Assessor's position is that J 's parent-child exclusion claims took priority over S 's claims because they were filed first, thereby using up a portion of L 's $1 million exclusion first. The Assessor claims that the proper procedure is to process the claims based on the date of filing. The Assessor also believes that J 's parent-child exclusion claim form was properly signed by J as "transferor" because the conveyance was not from L 's Trust to J , but rather the title flowed by operation of law from L to J as the remainderman of L 's terminated life estate, and therefore there was no need to require the signature of the trustee.

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[15] We assume from the information we received, and for purposes of this letter, that this portion of interests that L granted to himself was part of L 's Trust corpus at the time of L 's death.

[16] There is an apparent inconsistency in the percentages of the properties claimed by S and the percentages provided in the Trust. However, it does not affect the conclusions in this letter. We also refrain from commenting on whether S 's buy-out of A 's interest, assuming there was such a buy-out, qualifies for the parent-child exclusion since we do not have information about those circumstances.

S 's position is that he, as the duly authorized executor of L 's estate, had the exclusive authority to allocate the $546,322 remaining of L 's $1 million exclusion and that J 's parent-child claims should be disallowed because they were not signed by the transferor or the transferor's legal representative.

Law & Analysis

Requirement for Certification by Transferor

Proposition 58, approved by the voters on November 4, 1986, added subdivision (h) to section 2 of article XIII A of the California Constitution. Subdivision (h) provides, in part, that the terms "purchased" and "change in ownership" shall not include the purchase or transfer between parents and their children of either a principal residence or the first $1 million of the full cash value of all other real property.

Revenue and Taxation Code[17] section 63.1 provides the statutory implementation of Proposition 58. It requires, among other things, that a claim be filed with the county assessor in order to exclude from re-assessment the purchase or transfer of the first $1 million of the full cash value of a non-principal residence. Section 63.1, subdivision (d)(1), states, in pertinent part, that the parent-child exclusion shall not be allowed unless the eligible transferee files a claim with the assessor for the exclusion sought and furnishes to the assessor *each of the following*:

> A. A written certification by the transferee [or his representative] . . . that the transferee is a parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. . . .
>
> B. A written certification by the transferor, the transferor's legal representative, the trustee of the transferor's trust, or the executor or administrator of the transferor's estate, signed and made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee and that the transferor is seeking the exclusion under this section and will not file a claim to transfer the base year value of the property under Section 69.5. (Rev. & Tax. Code § 63.1, subd. (d)(1)(A), (d)(1)(B).)

When section 63.1 was initially enacted, all transferors and all transferees were required to sign the claim form. Effective January 1, 2002, section 63.1, subdivision (d) was amended to, *inter alia*, eliminate the requirement for the transferor, legal representative, executor, or administrator to provide written certification that the transferor is the grandparent, parent, or child of the transferee. However, that requirement was reinstated through Senate Bill 2092 (Chapter 775, Statutes of 2002). In doing so, the Senate Rules Committee commented: "Legislation last year eliminated the requirement that all transferors and transferees sign the claim form for the parent-child transfer exemption from change-in-ownership reassessment. Unintended consequences arose from that change, and this proposal reverts to the prior rule that

[17] All further statutory references are to the California Revenue and Taxation Code, unless otherwise specified.

all parties must sign."[18] One of the unintended consequences that arose from eliminating the requirement for the transferor's certification was that the exemption was being granted to the first child who filed a claim. (Assem. Com. on Rev. & Tax. on Sen. Bill No. 2092 (2001-2002 Reg. Sess.) June 24, 2002, p. 2-3.)

If the transferor is unable or unwilling to sign the claim form, it is still possible to satisfy the statutory requirement. This is because the statute does not necessarily require the transferor's signature on the claim form per se, but rather requires a "copy of written certification by the transferor" of his relationship to the transferee. This certification may be in the form of another writing, such as a deed, court document, or tax return. Letter to Assessors (LTA) 2008/018 states, in this regard, as follows:

> Question [51]: A father transferred real property to his son and now refuses to sign the claim form. Can the son provide proof of the relationship in lieu of the father signing the claim form?
>
> Answer: In this regard, it is important to note that the exact language of the statute **does not require the transferor's signature** on the claim, but rather requires that the **transferee shall submit "A copy of written certification by the transferor** . . . made under penalty of perjury that the transferor is a parent . . . of the transferee." Section 63.1(d) requires the transferee to file the claim; and section 63.1(d)(1)(B) requires written certification as to parenthood and certification that the property transferred is the transferor's principal residence. The transferor's signature on the claim form is the standardized method approved by the Board for the assessor to obtain such written certification required by the statute. The lack of the transferor's signature would not preclude an assessment appeals board from determining whether there is sufficient independent evidence to satisfy the statute. **If, for example, there are other forms or writings, deeds, court documents, tax returns, etc., signed under oath or penalty of perjury, which indicate the parent-child relationship, then such documentation could satisfy the requirement of "written certification by the transferor."** (LTA 2008/018 (February 29, 2008), at Question 51 (emphasis added); see also Assessors' Handbook (AH) section 401, *Change in Ownership* (September 2010) at pp. 98-99.)

If a taxpayer submits an alternative form of writing to satisfy the requirement for a written certification by the transferor of his relationship to the transferee, "the weighing of such evidence, of course, and the ultimate conclusion to which it leads are questions of fact entirely within the purview of a county assessor, with review rights by a county assessment appeals board." (AH 401, *supra*, at p. 99; LTA 2008/018, *supra*, at Question 51.)

In addition, we believe the certification requirements in section 63.1 apply to any "purchase or transfer," regardless of whether the transfer is by operation of law or through the

[18] See Sen. Rules Com. on Sen. Bill No. 2092 (2001-2002 Reg. Sess.) May 14, 2002; Sen. Rev. & Tax. Com. on Sen. Bill No. 2092 (2001-2002 Reg. Sess.), April 24, 2002; Sen. Rules Com. on Sen. Bill No. 2092 (2001-2002 Reg. Sess.) August 20, 2002; Sen. Rules Com. on Sen. Bill No. 2092 (2001-2002 Reg. Sess.) August 21, 2002.

medium of a trust. Proposition 58 and section 63.1 as originally enacted simply used the terms "purchase or transfer," without addressing transfers through the medium of a trust. It was not until a few years later that section 63.1 was amended to provide that "'Transfer' includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust." (Rev. & Tax. Code § 63.1, subd. (c)(9); Property Tax Annotation[19] 625.0216 (February 21, 1989).) Therefore, we believe the certification requirements of section 63.1 apply to transfers that occur outside of trusts, as well as those that occur through trusts.

In this case, to our knowledge, J does not have authority to sign a claim form on behalf of L , as transferor. Doing so without such authority renders his claims invalid. He can, however, provide other certification as explained above to submit a valid claim. However, even if a valid claim is submitted, as explained below, the brothers must agree upon an allocation of the available amount of the $1 million exclusion before any of that amount is granted to either transferee.

Allocation of $1 million Parent-Child Exclusion

As mentioned above, the date of transfer of the subject properties to both S and J was the date of L 's death. J filed his parent-child exclusion claims before S , so out of the $546,322 remaining of L 's $1 million exclusion for a non-principal residence, the Assessor first applied $481,237 to J 's property. The remaining amount was $65,085, which the Assessor subsequently applied to S 's property. However, for the reasons discussed below, we believe S and J must agree upon an allocation before <u>any</u> of the $546,322 is granted to either transferee (assuming that J files a valid claim). Since $481,237 has already been applied to J 's property and $65,085 has been applied to S 's property, we believe the Assessor should reverse the exclusions in the entire amount of $546,322 and notify J and S that they must agree upon an allocation before any of the available exclusion is granted.

If all properties are transferred on the same date from the same eligible transferor, and multiple transferees file competing claims for the $1 million exclusion for those properties whose full cash values cumulatively exceed the $1 million limit or remaining amount thereof, the transferees must decide how to allocate the available exclusion amount. LTA 2008/018, on page 3, sets forth the Board's position regarding the treatment of multiple claims on multiple properties from the same eligible transferor:

> . . . if parent-child claims are filed for multiple properties of which the full cash values cumulatively exceed the $1 million limit, then the *transfer date* becomes the determining factor for which properties are to receive the property tax exclusion. In other words, the first properties transferred shall receive the $1 million exclusion in this situation. If the transfer date is the same for all properties (for example, date of death), the transferees must decide which properties are to receive the $1 million exclusion. (Emphasis in original.)

[19] Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

LTA 2008/018 also sets forth the following examples:

> Example 2: In addition to his principal residence, a father owns four parcels of other real property with a combined adjusted base year value of $2,000,000. The father dies in 1992. His will bequeaths two parcels to son A and the other two parcels to son B. Both sons file parent-child exclusion claims for the real property. Since the transfer date is the same for all the properties, sons A and B must decide which properties are to receive the $1 million exclusion. The exclusion is to be applied on a pro rata basis [between land and improvements] and not to selected portions [of each property]. [¶ . . . ¶]
>
> Question [15]: If more than one eligible transferee claims the $1,000,000 exclusion of a transferor, which transferee receives the exclusion?
>
> Answer: Since both section 2(b) of article XIII A of the California Constitution and section 63.1 use the term "the first one million dollars," it suggests that priority should be based on the timing of the transfers. Where simultaneous transfers are made to two or more qualifying transferees (i.e., date of death), there is no express guidance in the statute. The transferees should agree on an allocation of the exclusion. (See also LTA 2008/018, question 17.)

Thus, where simultaneous transfers are made to multiple eligible transferees, the transferees must agree upon an allocation of the $1 million exclusion. Accordingly, in our view, the Assessor is not authorized to allocate the available $1 million exclusion based solely on the date the claim is filed. Legislative history and previous guidance have prohibited granting the exclusion solely on that basis. For example, LTA 2003/018 states, "If the transfer date is the same for multiple properties, the transferees must decide which properties will be excluded. Neither the date the claim is filed with the assessor nor the quarter in which the claim is reported to the State Board of Equalization is a determining factor." (LTA 2003/018, p. 2.)

Additionally, the legislature did not intend for the exemption to be granted simply to the first transferee who files a claim:

> SB 1184 [(Chapter 613, Statutes of 2001)] deleted the requirement that the transferors sign the claim form and provided that only one transferee needed to sign the claim form. According to BOE, two unintended consequences resulted from eliminating the transferor's signature. The first occurs in situations where the parents own more than $1 million in property in addition to their principal residence. The parent-child exclusion is limited to the first $1 million in property claimed. Because the parent or the executor of the parent's estate is no longer required to sign the claim form, he or she cannot direct which property or child is to receive the property tax benefits of the exclusion. In practice, this results in the exemption being granted to the first child who files a claim. Reinstating the signature requirement will give the parent or the executor of the estate the ability to determine how best to use the $1 million limit. (Assem. Com. on Rev. & Tax. on Sen. Bill No. 2092 (2001-2002 Reg. Sess.) June 24, 2002, p. 2-3.)

Thus, the legislature first intended that the transferor determine how best to use the $1 million limit, and if that is not possible, for the transferees to agree on the allocation, as discussed above. In the absence of agreement among the transferees, the legislature was not explicit in its directives on what to do in that event, but it clearly indicated that one eligible claim was not to be given preference over another on the grounds that it was filed first.

Therefore, if the Assessor grants part of the exclusion to one eligible transferee and subsequently receives another valid claim for the same date of transfer, the Assessor should, in our opinion, reverse the exclusion already granted and notify the transferees that they must agree upon an allocation before any of the available exclusion is granted. This approach allows the assessor to process received claims promptly while accommodating the complexities involved in some transfer situations. Unilaterally allocating the exclusion amount in order of time instead of requesting that the transferees make this determination among themselves conflicts with the previously published guidance and legislative intent described above.

In this case, the Assessor should reverse the exclusions that have been granted and notify J and S that they must agree upon an allocation before any of the available exclusion is granted.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,

/s/ Sonya S. Yim

Sonya S. Yim
Tax Counsel III (Specialist)

SSY/mcb
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cc:

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